

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4880 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?No

2. To be referred to the Reporter or not?

No

3. Whether Their Lordships wish to see the fair copy of the judgement?

No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

MANOJBHAI GOVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JK PARMAR for Petitioner

Mr. K.P. Rawal, APP, for Respondent No. 1

MRS JYOTSNA K PATEL for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 03/02/98

ORAL JUDGEMENT

By means of filing this application under Section 482 of the Code of Criminal Procedure ('Code' for short), the petitioner has prayed to quash the proceedings, which are pending in the Court of learned Judicial Magistrate, First Class, Kapadwanj, being Criminal Misc. Application No.61 of 1997, filed by respondent No.2, under Section 125(3) of the Code.

The marriage between the petitioner and respondent No.2 took place on May 23, 1991, at village Nawagam, Taluka Kapadwanj, District Kheda. The petitioner and respondent No.2 lived happily for five months and, thereafter, disputes between them have

started, with the result respondent No.2 was compelled to leave her matrimonial home and started staying at her parents house. Divorce, by mutual consent, was obtained on November 19, 1992, due to the intervention of Jyoti Sangh. Respondent No.2, thereafter, filed Criminal Misc. Application No.43/93 under section 125 of the Code for maintenance, which was compromised on November 7, 1993 due to intervention of some elder persons. After the compromise, the petitioner and respondent No.2 stayed as husband and wife. However, due to harassment of the petitioner, respondent No.2 was, again, driven out from the matrimonial home, and she stayed at her parents house. Respondent No.2, thereafter, filed Criminal Misc. Application No.12 of 1994 in the Court of learned Judicial Magistrate, First Class, Kapadwanj, under Section 125 of the Code for maintenance. The learned Judicial Magistrate, First Class, Kapadwanj, has fixed the maintenance allowance at Rs.500/- per month in favour of respondent No.2. Therefore, respondent No.2 is entitled to maintenance at the rate of Rs.500/- per month from January 17, 1994.

As the petitioner did not pay the maintenance amount due and payable to respondent No.2, she was compelled to file Criminal Misc. Application No. 61 of 1997 in the Court of learned Judicial Magistrate, First Class, Kapadwanj, under Section 125(3) of the Code. The learned Judicial Magistrate, First Class, Kapadwanj, has issued a show cause notice against the petitioner on July 31, 1997, to show cause as to why the amount claimed by respondent No.2 be not recovered from him in and other consequential orders. The petitioner has challenged the above order passed by the learned Judicial Magistrate, First Class, Kapadwanj, in Criminal Misc. Application No.61 of 1997.

Heard the learned advocates appearing for the parties.

Admittedly, the petitioner has failed to deposit or pay the arrears of amount of maintenance to respondent No.2. Respondent No.2 was, therefore, constrained to file application under Section 125(3) of the Code for recovery of arrears of the maintenance. No ground is made out by the petitioner to interfere with issuance of show cause notice by the learned Judicial Magistrate, First Class, Kapadwanj, in Criminal Misc. Application No.61 of 1997. The learned Judicial Magistrate, First Class, Kapadwanj, has merely issued show cause notice to the petitioner, who has failed to deposit or pay the

arrears of maintenance amount due to respondent No.2. This Court, in exercise of its inherent powers under Section 482 of the Code, cannot interfere with the impugned order. I do not find any merit in this application and, hence, it is required to be rejected.

For the foregoing reasons, this applications fails and is, hereby, rejected. Rule is discharged.

(swamy)